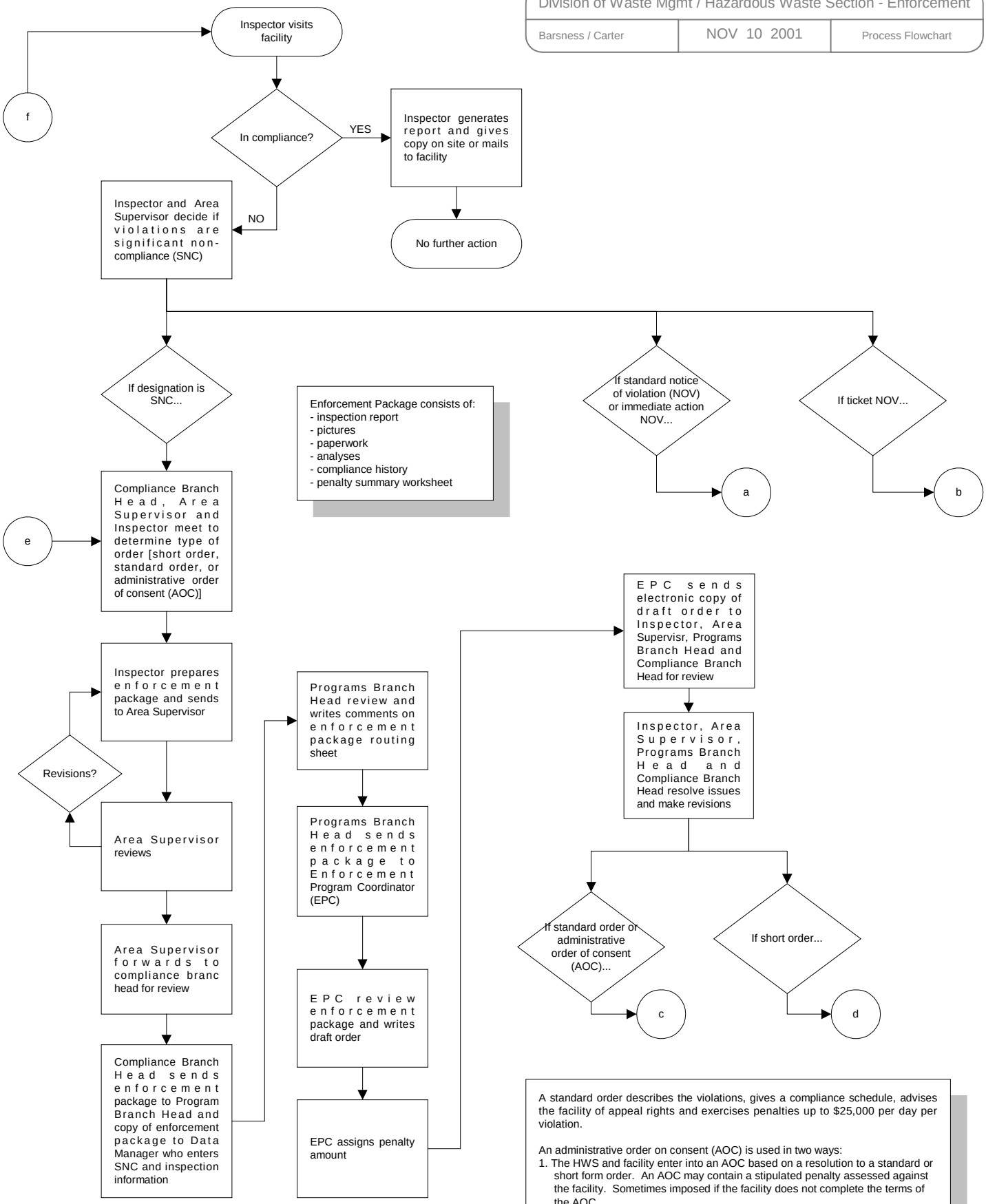
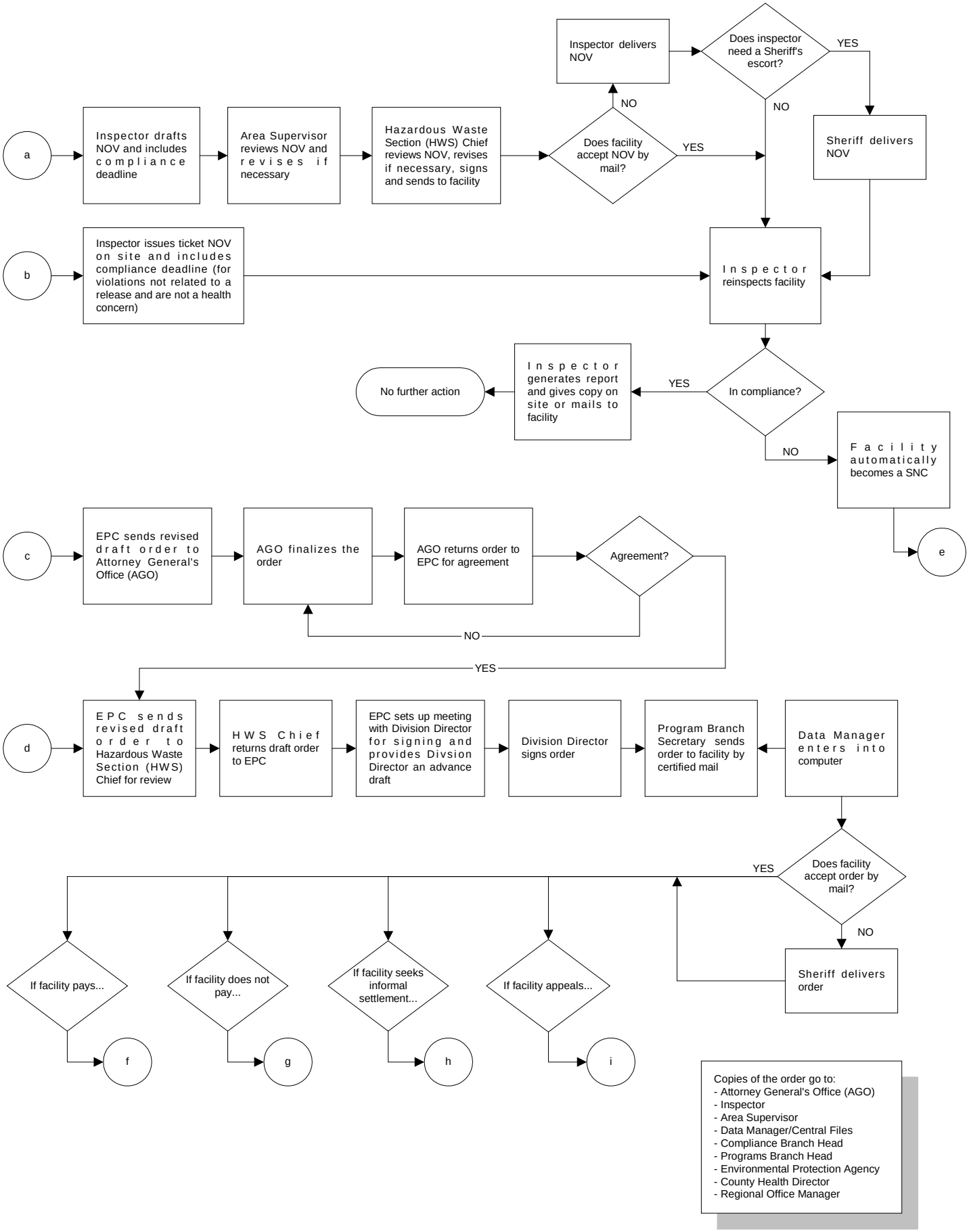
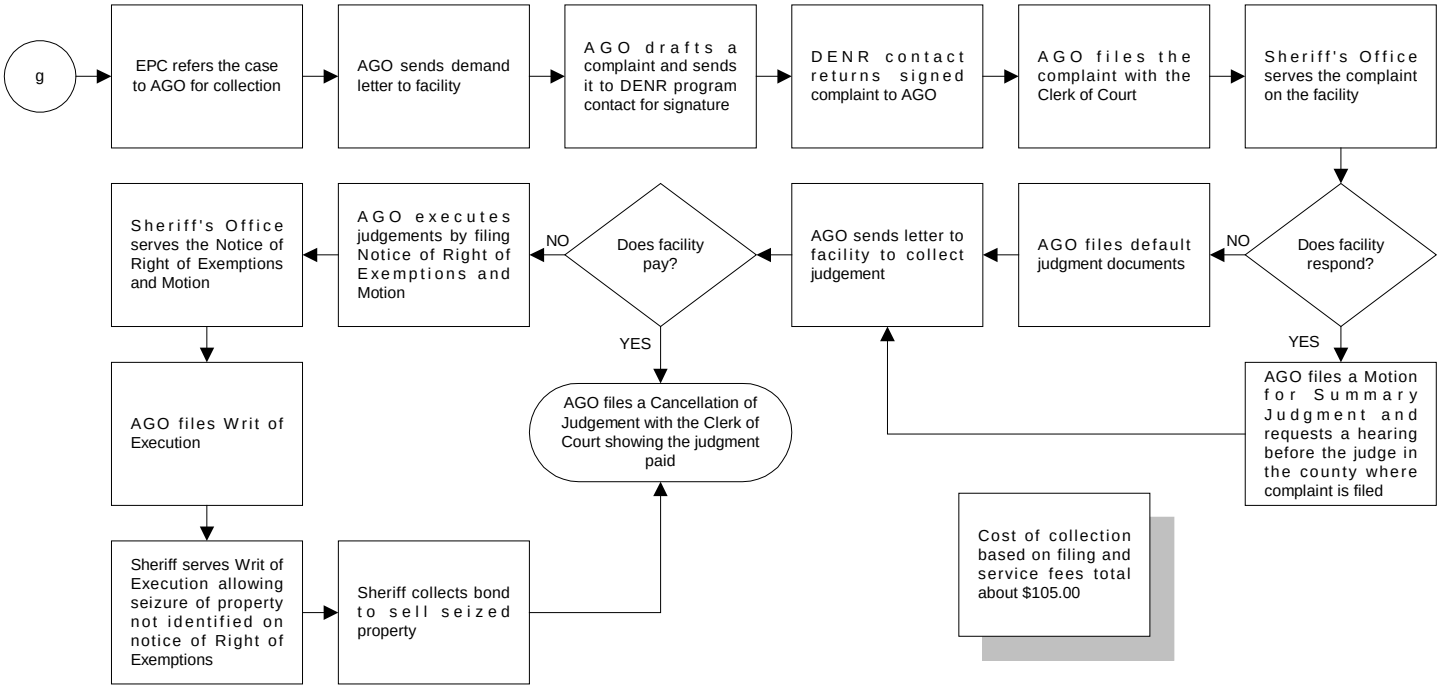
Division of Waste Mgmt / Hazardous Waste Section - Enforcement		
Barsness / Carter	NOV 10 2001	Process Flowchart

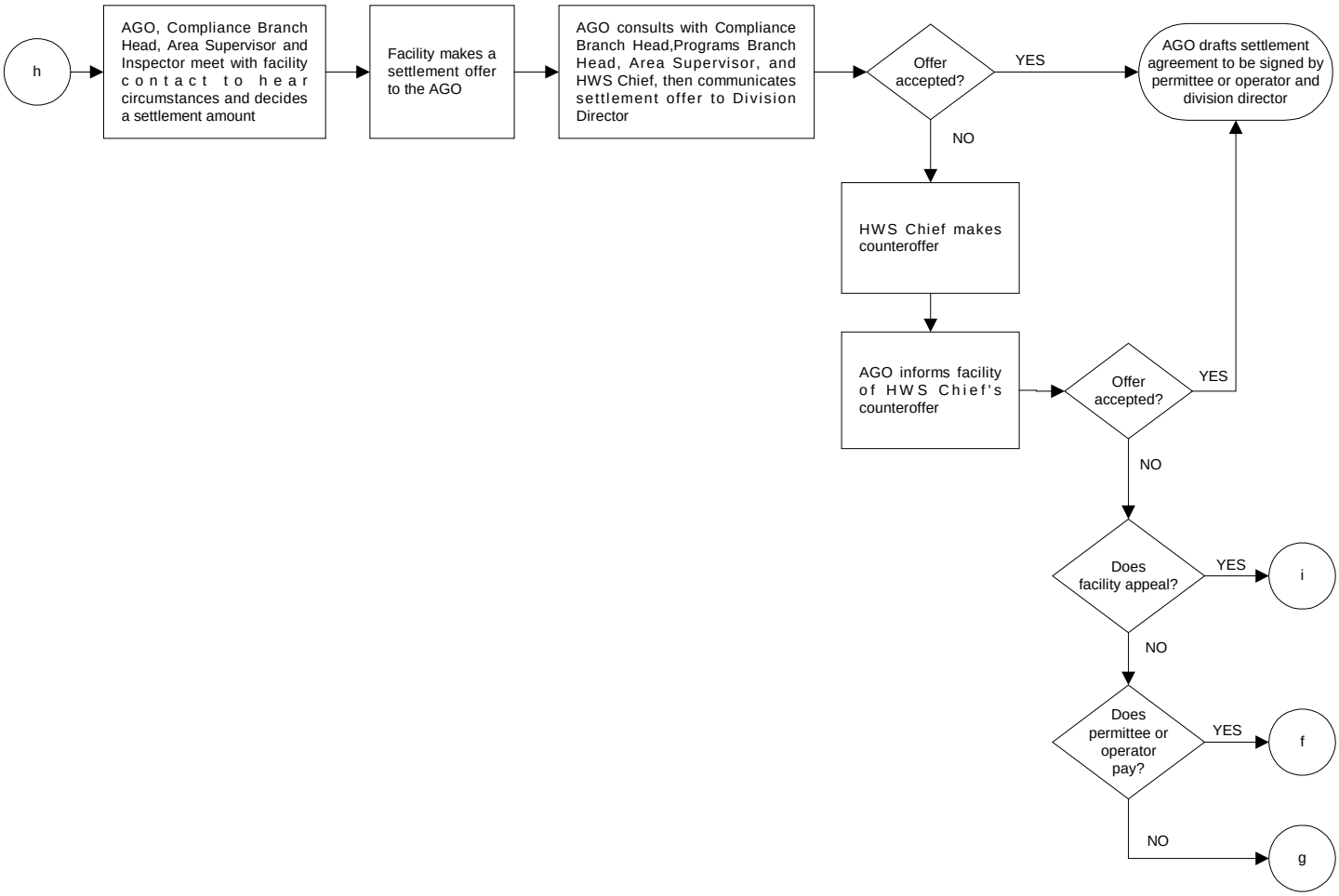


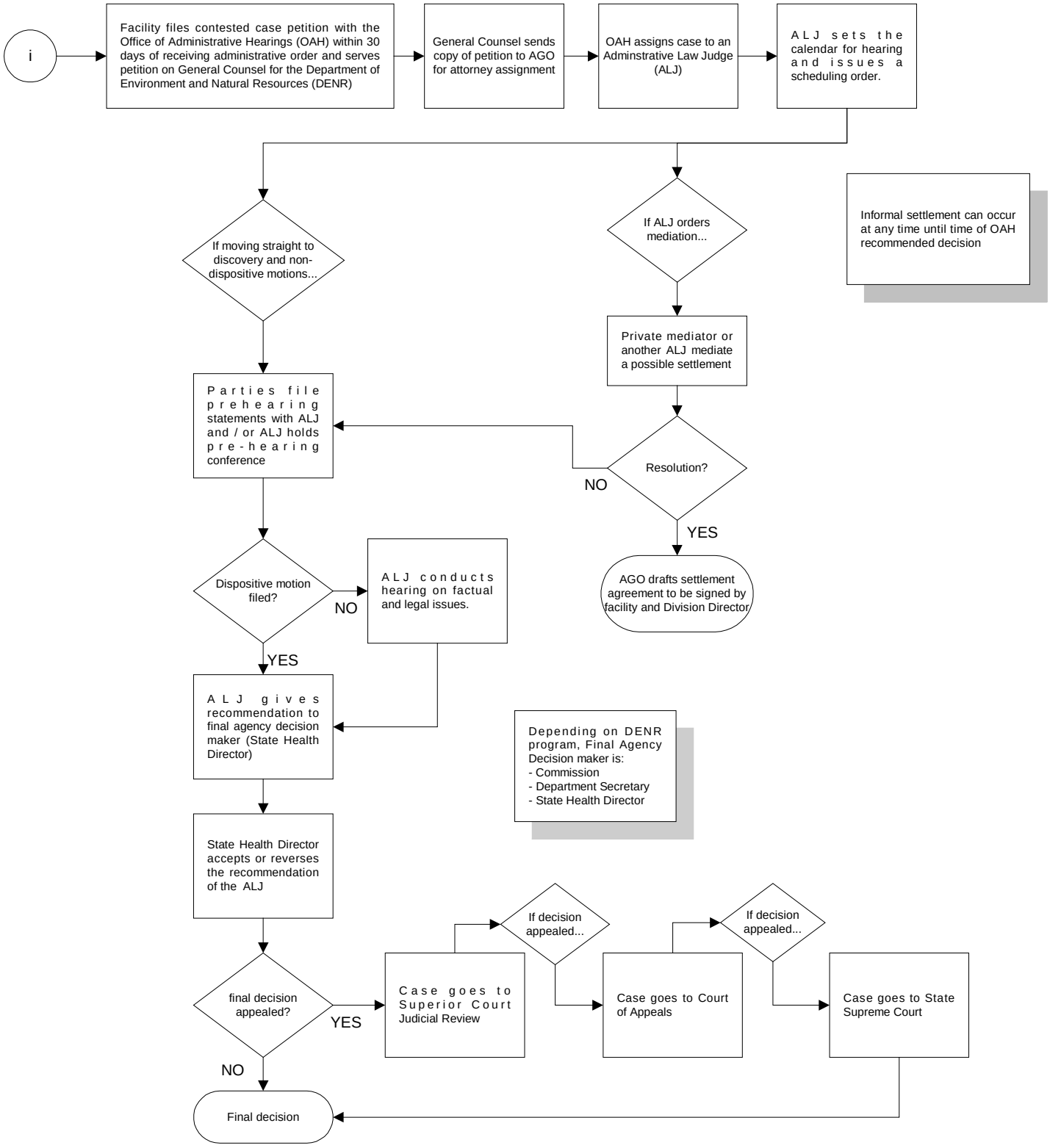
A standard order describes the violations, gives a compliance schedule, advises the facility of appeal rights and exercises penalties up to $25,000 per day per violation.

An administrative order on consent (AOC) is used in two ways:
1. The HWS and facility enter into an AOC based on a resolution to a standard or short form order. An AOC may contain a stipulated penalty assessed against the facility. Sometimes imposed if the facility does not complete the terms of the AOC
2. A facility voluntarily identifies a problem and proposes a remedy.


a
Inspector drafts NOV and includes compliance deadline
Area Supervisor reviews NOV and revises if necessary
Hazardous Waste Section (HWS) Chief reviews NOV, revises if necessary, signs and sends to facility
Does facility accept NOV by mail?
NO
YES
Inspector delivers NOV
Does inspector need a Sheriff's escort?
YES
NO
Sheriff delivers NOV
b
Inspector issues ticket NOV on site and includes compliance deadline (for violations not related to a release and are not a health concern)
Inspector reinspects facility
In compliance?
YES
Inspector generates report and gives copy on site or mails to facility
No further action
NO
Facility automatically becomes a SNC
e
c
EPC sends revised draft order to Attorney General's Office (AGO)
AGO finalizes the order
AGO returns order to EPC for agreement
Agreement?
NO
YES
d
EPC sends revised draft order to Hazardous Waste Section (HWS) Chief for review
HWS Chief returns draft order to EPC
EPC sets up meeting with Division Director for signing and provides Divsion Director an advance draft
Division Director signs order
Program Branch Secretary sends order to facility by certified mail
Data Manager enters into computer
Does facility accept order by mail?
YES
NO
Sheriff delivers order
If facility pays...
If facility does not pay...
If facility seeks informal settlement...
If facility appeals...
f
g
h
i
Copies of the order go to:
- Attorney General's Office (AGO)
- Inspector
- Area Supervisor
- Data Manager/Central Files
- Compliance Branch Head
- Programs Branch Head
- Environmental Protection Agency
- County Health Director
- Regional Office Manager


g
EPC refers the case to AGO for collection
AGO sends demand letter to facility
AGO drafts a complaint and sends it to DENR program contact for signature
DENR contact returns signed complaint to AGO
AGO files the complaint with the Clerk of Court
Sheriff's Office serves the complaint on the facility
Does facility respond?
NO
YES
AGO files default judgment documents
AGO sends letter to facility to collect judgement
AGO files a Motion for Summary Judgment and requests a hearing before the judge in the county where complaint is filed
Does facility pay?
NO
YES
AGO executes judgements by filing Notice of Right of Exemptions and Motion
Sheriff's Office serves the Notice of Right of Exemptions and Motion
AGO files a Cancellation of Judgement with the Clerk of Court showing the judgment paid
AGO files Writ of Execution
Sheriff serves Writ of Execution allowing seizure of property not identified on notice of Right of Exemptions
Sheriff collects bond to sell seized property
Cost of collection based on filing and service fees total about $105.00


h
AGO, Compliance Branch Head, Area Supervisor and Inspector meet with facility contact to hear circumstances and decides a settlement amount
Facility makes a settlement offer to the AGO
AGO consults with Compliance Branch Head,Programs Branch Head, Area Supervisor, and HWS Chief, then communicates settlement offer to Division Director
Offer accepted?
YES
NO
AGO drafts settlement agreement to be signed by permittee or operator and division director
HWS Chief makes counteroffer
AGO informs facility of HWS Chief's counteroffer
Offer accepted?
YES
NO
Does facility appeal?
YES
i
NO
Does permittee or operator pay?
YES
f
NO
g


i
Facility files contested case petition with the Office of Administrative Hearings (OAH) within 30 days of receiving administrative order and serves petition on General Counsel for the Department of Environment and Natural Resources (DENR)
General Counsel sends copy of petition to AGO for attorney assignment
OAH assigns case to an Adminstrative Law Judge (ALJ)
ALJ sets the calendar for hearing and issues a scheduling order.
If moving straight to discovery and non-dispositive motions...
If ALJ orders mediation...
Informal settlement can occur at any time until time of OAH recommended decision
Private mediator or another ALJ mediate a possible settlement
Parties file prehearing statements with ALJ and / or ALJ holds pre-hearing conference
Resolution?
NO
YES
AGO drafts settlement agreement to be signed by facility and Division Director
Dispositive motion filed?
NO
ALJ conducts hearing on factual and legal issues.
YES
ALJ gives recommendation to final agency decision maker (State Health Director)
Depending on DENR program, Final Agency Decision maker is:
- Commission
- Department Secretary
- State Health Director
State Health Director accepts or reverses the recommendation of the ALJ
If decision appealed...
If decision appealed...
final decision appealed?
YES
Case goes to Superior Court Judicial Review
Case goes to Court of Appeals
Case goes to State Supreme Court
NO
Final decision